

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed)	RM-10586
and Mobile Broadband Access, Educational and Other)	
Advanced Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further Competitive)	WT Docket No. 03-67
Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint)	MM Docket No. 97-217
Distribution Service and the Instructional Television)	
Fixed Service to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution)	RM-9718
Service and in the Instructional Television Fixed Service)	
for the Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

To: The Commission

**CONSOLIDATED COMMENTS OF HITN REGARDING BROADBAND
SERVICES ORDER PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules, Hispanic Information and Telecommunications Network ("HITN"), by its attorneys, hereby submits its consolidated comments on various petitions for reconsideration filed with regard to the Commission's Report and Order in the above referenced matter.¹

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order ("*Broadband Services Order*") and Further Notice of Proposed Rulemaking ("*FNPRM*"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004). A summary of the

I. Introduction

HITN, founded in 1981, is a 501(c)(3) non-profit private foundation whose mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN-TV, the first and only 24-hour a day Spanish language public interest television channel in the United States, is presently carried on the Dish Network, DirecTV and the Time Warner Cable Network. HITNet, a satellite-based broadband service delivered via HITN's state of the art satellite platform at the Brooklyn Navy Yard, New York, is currently providing Internet access to the most underprivileged schools and libraries throughout Puerto Rico. HITN also holds over 45 station authorizations in the Educational Broadband Service ("EBS") for facilities throughout the United States and Puerto Rico. HITN's EBS facilities are presently used to provide educational programming, and through a partnership with Clearwire Corporation, advanced wireless broadband services in several markets. HITN, one of the largest holders of EBS authorizations in the United States, has a significant stake in the outcome of this proceeding, and therefore has participated in all earlier facets of this Rulemaking.²

II. Discussion

A. Pre-transition Data Requests

Both Nextel and the Wireless Communications Association International ("WCAI") requested that in light of the adoption of geographic licensing, additional

Broadband Services Order was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,020.

² See Comments and Reply Comments of HITN filed in response to Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 03-56 (rel. April 2, 2003), 18 FCC Rcd 6722, 6734 (2003) ("*NPRM*").

information be required under section 27.1231(f) of the Commission's Rules in response to pre-transition data requests, that such responses be made mandatory and that severe penalties be adopted if responses are not timely submitted.³ While HITN has no problem with the position that additional information may now be appropriate, it does believe that the 21 day response timeframe requested is unreasonably short, especially in light of the magnitude of the penalty being requested for unresponsive parties.

Presupposing that the Proponent has in fact identified the proper party to which it would submit the pre-transition request, and that such notice was actually received, it is unreasonable given the often bureaucratic nature of the entities being queried, the varied internal structures and procedural requirements, and uncertain ready availability of technical support, for the proponent to expect such rapid turn around on its request. As a proponent may have taken many months to prepare its transition plans and its pre-transition requests, it is only fair that an educational institution or not for profit entity be afforded a reasonable period of forty five (45) days in which to provide all requested information.

Additionally, allowing a proponent to proceed without replacing downconverters or transitioning the programming tracks of unresponsive parties is an extremely harsh penalty and will almost certainly open the door to significant disputes. While some penalty is no doubt appropriate, without some requirement that a proponent establish that the unresponsive party actually received notification and then failed to reply, excusing a proponent from its transition obligations would be unwarranted. Perhaps such penalties might be more justifiable if the Commission adopted a second phase notice following the

³ WCAI Petition for Partial Reconsideration at pp. 22-24 and Nextel Petition for Partial Reconsideration at pp. 9-11.

normal forty five day response period, pursuant to which a proponent might serve unresponsive parties with certified notice (return receipt requested) stating that such penalties will be applied if a response is not provided within an additional fifteen (15) days.

B. Financial Penalty for Counterproposal to a Reasonable Plan

While the WCAI's concern regarding greenmail and delay brought on by objections or counterproposals to otherwise reasonable transition plans is understandable, the requested penalties would further chill EBS licensees from making any objection at all to a proponent's transition proposals. The transition mechanisms as currently adopted already provide an institution or organization with far too little time to analyze and respond to a transition plan as it is. The adoption of such harsh penalties for counterproposals, where an original plan is later determined to have been reasonable, would make a mockery of what little notice and response opportunity has been afforded to EBS licensees under the process.

Under the rules as adopted, a proponent may craft its plan over many months with great analysis and care, may do its pre-transition data requests, and then when it is ready, may submit its "Initiation Plan", starting a ninety day planning period. It is not until within thirty days of the end of that period that the proponent must supply the transition plan to all of the licensees in the transition area. Such licensees must then submit any objection or counterproposal within ten days of the close of the planning period. Presupposing that such licensees actually must have received the plan, and not just been sent the plan thirty days before the close of the planning period, then licensees would have a twenty day period in which not only to read and understand the proponent's plan,

but to arrange for and obtain any needed engineering analysis, and where necessary to craft and serve a counterproposal on the proponent. As if this will not be hard enough, the WCAI wants to place substantial penalties on an EBS licensee if its rapid analysis and hastily prepared counterproposal proves flawed, and if later a protracted evaluation of the original plan by a third party determines it to have been reasonable. The combination of such a short response period coupled with a substantial penalty for innocent error would almost certainly deter any and all objections by affected EBS licensees.

C. Resubmission of Initiation Plan Proposals

WCAI, Nextel and Sprint all requested modification of the Commission's Rules so that a proponent that withdraws an initiation plan would not be barred from seeking to transition that geographic area at a later date. Each of the petitioners would have the Commission permit a proponent one withdrawal of a transition plan without penalty. While HITN does not oppose this concept it believes that some penalty or disincentive mechanism should be put in place to prevent abuse. HITN is concerned that a large company rushing to gain control of certain market transitions might file poorly researched place-holder transition proposals, with the intention of withdrawing and replacing such proposals at some later date with more carefully tailored plans.

HITN believes that such a potential practice could result in a number of harmful outcomes. First, EBS licensees could be called upon to complete and respond to multiple pre-transition data requests or submit multiple counterproposals where transition plans are withdrawn and resubmitted in modified form. Second, the Commission might not be able to adequately evaluate the progress of the transition process, where transition plans

may be casually filed and withdrawn without penalty at a later date. Third, even if well meaning parties engage in such place holder activities, but subsequently withdraw their plans late in the transition process for individual business reasons, other potential proponents may have insufficient time to step up and act as a proponent before the three year period comes to an end, leaving a large number of geographic areas untransitioned at the end of the process. To avoid such abuses, HITN believes that while the Commission should not deny the industry request, it should put in place certain disincentive penalties that would discourage place holder filings. One such measure would be to allow a proponent to withdraw one time without penalty only during a limited period (less than 6 months) following the filing of an Initiation plan.

D. Two-way Operations in Advance of Transition

Both NIA and Imwed propose limitations on the implementation of two-way operations in a geographic area in advance of a full transition to the new band plan. Imwed argues that allowing ad hoc methods of providing two-way service will somehow deter proponents from undertaking the daunting task of transitioning large geographic areas. HITN disagrees.

The purpose of the new rules is to speed rather than impede the development of new services within the marketplace. HITN, with the cooperation of one of its commercial wireless partners, has already been able to roll out two-way wireless services in several markets in advance of the new rules. Such facilities continue to operate, providing valuable new two-way services within those markets without interference to existing high powered co-channel or adjacent channel operations. Terminating these

services on the basis of an unfounded theory, only to have to reintroduce them following a full transition would substantially prejudice HITN, its commercial partner, and current subscribers, and therefore would not serve the public interest

Additionally, licensees and commercial operators will have continued need to conduct tests of equipment and operational designs on a more limited scale over the next few years as they move to fully convert larger geographical areas. HITN's developmental authorizations around Jacksonville, Florida and Providence, Rhode Island, suggest that with a minimal amount of caution, two-way services can be rolled out side by side with existing high powered video operations in advance of a full band plan transition without substantial interference concerns.

III. Conclusion

HITN respectfully requests that the Commission consider these additional comments in evaluating the various pending reconsideration requests regarding its Broadband Services Order and the Rules adopted thereby.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing Consolidated Comments of HITN Regarding Broadband Services Order Petitions for Reconsideration were served this 22nd day of February, 2005 on the following parties via electronic mail.

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